

PD-0724-20 and PD-0725-20

In the Court of Criminal Appeals of Texas
At Austin

FILED
COURT OF CRIMINAL APPEALS
12/2/2020
DEANA WILLIAMSON, CLERK

Nos. 01-20-00004-CR and 01-20-00005-CR

In the Court of Appeals
For the First District of Texas
At Houston

Nos. 1657519 and 1657521

In the 338th District Court
Of Harris County, Texas

Ex parte Joseph Eric Gomez
Appellant

**State's Response in Opposition to
Appellant's Motion to Dismiss Appeal as Moot**

Clint Morgan

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The appellant's issue is not moot. The appellant has made bail but he was never appealing the amount of his bail. Instead, he was appealing the trial court's power to make him post additional bonds. That he posted additional bonds does not render moot his challenge to the trial court's power to hold him to those bonds.

During this bail appeal the appellant has posted bail and been released. Ordinarily, posting bail would render moot a bail appeal. But this is no ordinary bail appeal.

Shortly after being arrested, the appellant posted a bond in the amount set by the first magistrate to hear the case. But when the case was assigned to a trial court the trial judge determined bail had been set in an insufficient amount. Under the authority of Code of Criminal Procedure Article 17.09, the trial court ordered the appellant rearrested and required him to post additional bonds. The First Court reversed that decision, but this Court granted the State's PDR. Two days after this Court set a submission date, the appellant posted additional bonds and was released from jail.¹ He has asked this Court to dismiss the case as moot, but then he filed a letter suggesting perhaps the case is not moot after all.

¹ The appellant says he has requested supplemental records from the district clerk. The State has attached certified copies of the appellant's new surety bonds to this motion, and represents that, according to the State's records, the appellant was released from jail on November 21.

The State agrees with the appellant’s letter, or at least the second half of it: This case is not moot. The issue here—whether the trial court could require the appellant to post additional bonds—is conceptually different from prior bail appeals that have been dismissed as moot.

The general rule is that “where the premise of a habeas corpus application is destroyed by subsequent developments, the legal issues raised thereunder are moot.” *Bennet v. State*, 818 S.W.2d 199, 200 (Tex. App.—Houston [14th Dist.] 1991, no pet.). This rule has been used to dismiss bail appeals primarily in two circumstances. The first is where the defendant is convicted during the appeal. *See, e.g., ibid; Ex parte Norvell*, 528 S.W.2d 129, 130 (Tex. Crim. App. 1975) (dismissing as moot habeas appeal where defendant complained about denial of appeal bond, but conviction was affirmed and mandate issued during pendency of habeas appeal). The second is where a defendant challenges the amount of bail but the trial court lowered the amount of bail during the appeal and the defendant made the reduced bail. *See, e.g., Ex parte Guerrero*, 99 S.W.3d 852, 853 (Tex. App.—Houston [14th Dist.] 2003, no pet.); *Ex parte Irsan*, No. 01-16-00315-CR, 2017 WL 769896, at *1 (Tex. App.—Houston [1st Dist.] Feb. 28, 2017, no pet.) (mem. op. not

designated for publication) (withdrawing original opinion and dismissing appeal as moot where trial court reduced bail and defendant was released before issuance of original opinion).

In both circumstances it makes sense to dismiss the case as moot because the underlying controversy has been “destroyed.” In the cases of conviction, the defendant was no longer eligible for release. In the cases of reduced bail, the only issues in those cases was whether the original bail amount was reasonable, but when the amount of bail was reduced the original question was no longer an active controversy.

Here, though, the appellant’s appeal challenges the trial court’s power to force him to obtain a second bond *at all*. A ruling in his favor would reinstate the original bond amounts and mean that he and his sureties would be discharged from \$110,000 of bond liability.

To avoid a finding of mootness, the complaining party in a suit must maintain standing throughout the litigation. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 189-92 (2000) (discussing interplay of mootness and standing). Mootness is a doctrine that helps courts stay within their jurisdictional boundaries. If a complaining party would not benefit from a ruling in its favor, any resulting opinion is an advisory opinion. *See Pfeiffer v. State*, 363 S.W.3d

594, 601 (Tex. Crim. App. 2012) (explaining that Texas appellate courts are “without authority” to issue advisory opinions).

Here, a ruling from this Court in the appellant’s favor would not be an advisory opinion because the appellant would be released from the restraint of the additional bonds the trial court required him to post. *See Ex parte Robinson*, 641 S.W.2d 552, 553 (Tex. Crim. App. 1982) (“A person who is subject to the conditions of a bond is restrained in his liberty within the meaning of Article 11.01.”). The legal issue the appellant raised from the beginning—whether the trial court abused its discretion in making him post additional bonds—is still a live question.

Without claiming its legal research is exhaustive, the State has found only one opinion where an appellate court dismissed a bail appeal because the defendant got a bond in the amount he originally challenged. In *Ex parte Armstrong*, No. 02-15-00180-CR, 2015 WL 5722821 (Tex. App.—Fort Worth Aug. 26, 2015, no pet.)(mem. op. not designated for publication), the defendant claimed \$15,000 was excessive bail, but he made bail while the appeal was pending. Without citing any on-point authority, the Second Court held that the issue was moot. It added:

We have found authority for the proposition that a person who is subject to the conditions of a bond is restrained in his liberty for purposes of habeas corpus. *See Ex parte Robinson*, 641 S.W.2d 552, 553 (Tex.Crim.App. [Panel Op.] 1982). However, Appellant is not complaining about the conditions of his \$15,000 bond. In his brief, Appellant asks that he be released from jail on a personal bond or a zero-dollar bond. Appellant is not arguing he should be released free of any bond whatsoever; that is, he is not complaining about the restraints on his liberty that a bond would otherwise impose on him assuming he were able to post a bond. Accordingly, there are no issues for the court to resolve.

Id. at *3.

That analysis misses the forest for the trees. There are lots of things called bond “conditions”—*e.g.*, no-contact orders, GPS monitoring—but the biggest condition of bond is that you are financially liable if you don’t show up to court. Armstrong was still subject to that condition, as is the appellant.

A case like *Armstrong* is also distinct from this case because Armstrong claimed his bail was excessive. Here, the appellant is challenging the trial court’s power to require the additional bonds, not the amount required. In a case where a defendant claiming his bail is excessive, the fact that he made bail is very strong evidence he is wrong. In a case

where the defendant is challenging the trial court's power to require additional bonds at all, whether he can make the additional amount is not relevant.

Conclusion

This Court should deny the appellant's motion to dismiss because this case still presents an active controversy.

Kim Ogg
District Attorney
Harris County, Texas

/s/ C.A. Morgan
Clint Morgan
Assistant District Attorney
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Texas Bar No. 24071454

Certificate of Compliance and Service

I certify that, according to Microsoft Word, the portion of this response for which Rule of Appellate Procedure 9.4(i)(1) requires a word count contains 1,180 words.

I also certify that I have requested that efile.txcourts.gov electronically serve a copy of this brief to:

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/s/ C.A. Morgan
Clint Morgan
Assistant District Attorney
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500 Jefferson Street, Suite 600
Houston, Texas 77002
Telephone: 713 274 5826
Texas Bar No. 24071454

Date: December 1, 2020

Appendix: Appellant's New Surety Bonds

2427203

BAIL BOND

CASE NO. 1653305
CHARGE BURG W-INTENT-COMMIT OTHER
FEL
SPN 02489311

COURT SETTING:

DATE January 8th, 2021

TIME 8:30 AM



Known All Men By These Presents:

That we, Gomez, Joseph Eric, or principal, and the undersigned United States Fire Insurance Company (Agent Wisam Muharib)

as sureties, are held and firmly bound unto the STATE OF TEXAS, in the penal sum of SEVENTY-FIVE THOUSAND DOLLARS (\$ 75,000.00) Dollars and, in addition thereto, we are bound for the payment of all fees and expenses that may be incurred by any peace officer in re-arresting the said principal in the event any of the hereinafter stated conditions of this bond are violated for the payment of which sum or sums well and truly to be made, we do bind ourselves, and each of us, our heirs, executors and administrators, jointly and severally.

THE CONDITION OF THIS BOND IS THAT THE DEFENDANT HAS BEEN CHARGE WITH A Felony offense and to secure his release from custody is entering into this obligation binding him to appear before 1201 Franklin Houston TX 77002 Harris County District Court 338 County of Harris County, Texas.

NOW THEREFORE, IF THE SAID PRINCIPAL SHALL WELL AND TRULY MAKE HIS PERSONAL APPEARANCE BEFORE SAID COURT INSTANTER AS well as before any other court to which the same may be transferred and for any an all subsequent proceedings that may be had relative to said charge in the course of criminal actions based on said charge, and there remain from day to day and term to term of said courts, until discharged by due course of law, then and there to answer said accusation against him, this obligation shall become void, otherwise to remain in full force and effect.

Taken and approved this 20th November 20 day of November 20, 20 by Sheriff, Harris County Texas United States Fire Insurance Company

Agent Wisam Muharib Surety 3813 Fulton Houston, TX 77003 (City and State) (713) 759-1000 (Phone) 74599 (City and State) S.M. Lic.# Empl.

THE DEFENDANT SHALL NOT HAVE ANY CONTACT WITH THE PROSECUTION /S/, WITNESS /S/, THE COMPLAINANT /S/, OR THE ALLEGED VICTIM /S/.

SIGNED AND DATED November 20th, 20 Joseph Gomez (Principal Signature) 1413 George St (Mailing Address) Pasadena, Texas (City and State)

RACE SEX DOB HT. WT. HAIR EYES DL# STATE

713-907-8976

Jail Location Harris

Citizen Status:

Holds:

ICE: A#

SB COST RECEIPT # 34899

FILED Marilyn Burgess District Clerk

NOV 21 2020

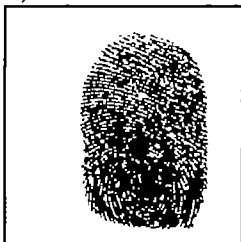
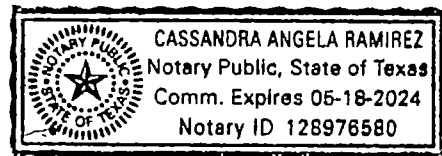
OATH OF SURETIES THE STATE OF TEXAS COUNTY OF HARRIS

Time: Harris County, Texas By Deputy United States Fire Insurance Company

I, do swear that we are worth in our own

right, at least double the amount of the sum for which we are bound, exclusive of all property exempted by law from execution, and of debts or other encumbrances, that we are residents of the State of Texas and I have property in the State of Texas liable to execution worth the sum for which I am bound.

Agent, Wisam Muharib Surety (Signature) Presenter (Signature)



Presenter Rt. Thumb Print ID #: 11044917

SUBSCRIBED AND SWORN to before me this 20 day of November A.D. 2020

Cassandra Angela Ramirez NOTARY PUBLIC HARRIS COUNTY My Commission Expires: 5-18-24

ORIGINAL-DISTRICT CLERK

RECORDER'S MEMORANDUM This instrument is of poor quality at the time of imaging.

11-01-2009

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A VOID PANTOGRAPH PRINTED ON SECURITY PAPER WITH A TRUE WATERMARK

UNITED STATES FIRE INSURANCE COMPANY
11490 Weathermer Rd., Suite 300 • Houston, TX 77077
P.O. Box 2807 • Houston, Texas 77262-2807
(713) 954-8100 (713) 954-8389 FAX

POWER OF ATTORNEY

POWER NO.

U100-21002891

POWER AMOUNT \$

100,000.00

This Power of Attorney is granted pursuant to Article IV of the By-Laws of UNITED STATES FIRE INSURANCE COMPANY as now in full force and effect. Article IV, Execution of Instruments. Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, Vice President, Assistant Vice President, Secretary or any Assistant Secretary shall have power on behalf of the Corporation: (a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business, including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements; (b) to appoint in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a) including affixing the seal of the Corporation. Authority of such Attorney-In-Fact is limited to appearance bonds and cannot be construed to guarantee defendants future lawful conduct, adherence to travel limitations, fines, restitution, payments or penalties of any other condition imposed by a court not specifically related to court appearance.

This Power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal Bonds or Immigration Bonds. This power void if altered or erased, void if used with other powers of this Company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.

The obligation of the Company shall not exceed the sum of ***One Hundred Thousand Dollars and Zero Cents***

and provided this Power of Attorney is filed with the bond and retained as a part of the court records. The said Attorney-In-Fact is hereby authorized to insert in this Power of Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, UNITED STATES FIRE INSURANCE COMPANY has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this 20 of November 2020
DAY MONTH YEAR

Bond Amount \$ 75,000 Gross Premium \$ _____

Defendant Gomez, Joseph Eric

Charges burg w-intent-commit other fel

Court 338

Case No. 1653305

City Houston

State TX

If rewrite, original No. _____

Executing agent _____
NAME



By _____

Michael Ziemer
Senior Vice President

VOID IF NOT ISSUED BY:

03/31/2021

FOR STATE USE ONLY
NOT VALID IF USED IN FEDERAL COURT

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES A SECURITY BACKER

COURT COPY

HARRIS COUNTY, TEXAS

ASSIGNMENT OF AUTHORITY

DATE 11/20 TIME 6:30pm AM/PM

Good for 48 hours Bond must be attached to be valid.

I HEREBY AUTHORIZE Gomez, Tim Joseph TDL# 11044917 TO ACT ON MY BEHALF TO PRESENT THIS BAIL BOND(S). BOND NUMBER 2427203 2427238 FOR THE PURPOSE OF RELEASING DEFENDANT Gomez, Joseph CASE# 1653305, 1653306 FROM HARRIS COUNTY/CITY OF HOUSTON/ OR Harris JAIL. LIABILITY LIMIT \$ 150,000

THE UNDERSIGNED AGENT SPECIFICALLY AGREES TO HOLD HARMLESS ALL JUDGES, LAW ENFORCEMENT OFFICIALS, AND THEIR AGENTS FROM LIABILITY THAT MAY IN CONNECTION WITH THE EXECUTION OR USE OF THIS ASSIGNMENT FORM ON THE ABOVE DESIGNATED BOND(S).

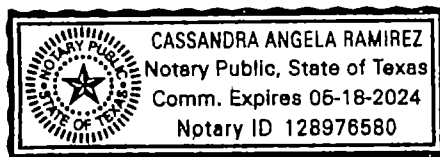
BY:

[Signature]
SURETY WISAM MUHARIB
LICENSE # 74599

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED Tim Gomez KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS 20th DAY OF November 2020

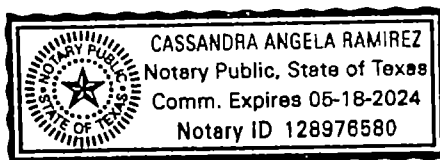


Cassandra Angela Ramirez
NOTARY PUBLIC STATE OF TEXAS
MY COMMISSION EXPIRES 5-18-24

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED WISAM MUHARIB- AGENT- UNITED STATES FIRE INSURANCE COMPANY. KNOWN TO ME TO BE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGE TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS 20th DAY OF November 2020



Cassandra Angela Ramirez
NOTARY PUBLIC STATE OF TEXAS
MY COMMISSION EXPIRES 5-18-24



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this November 30, 2020

Certified Document Number: 93204943 Total Pages: 3

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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2427238

BAIL BOND

CASE NO. 1653306
CHARGE ASLT FAM/HOUSE MEM IMPED
BRTH/
SPN 02489311

COURT SETTING:

DATE January 8th, 2021

TIME 8:30 AM



Known All Men By These Presents:

That we, Gomez, Joseph Eric, or principal, and the

undersigned United States Fire Insurance Company (Agent Wisam Muharib) as sureties, are held and firmly bound unto the STATE OF TEXAS, in the penal sum of SEVENTY-FIVE THOUSAND DOLLARS (\$ 75,000.00) Dollars and, in addition thereto, we are bound for the payment of all fees and expenses that may be incurred by any peace officer in re-arresting the said principal in the event any of the hereinafter stated conditions of this bond are violated for the payment of which sum or sums well and truly to be made, we do bind ourselves, and each of us, our heirs, executors and administrators, jointly and severally.

THE CONDITION OF THIS BOND IS THAT THE DEFENDANT HAS BEEN CHARGE WITH A Felony (Felony-Misdemeanor)

offense and to secure his release from custody is entering into this obligation binding him to appear before 1201 Franklin Houston TX 77002 Harris County District Court 338 County of Harris County, Texas.

NOW THEREFORE, IF THE SAID PRINCIPAL SHALL WELL AND TRULY MAKE HIS PERSONAL APPEARANCE BEFORE SAID COURT INSTANTER AS well as before any other court to which the same may be transferred and for any an all subsequent proceedings that may be had relative to said charge in the course of criminal actions based on said charge, and there remain from day to day and term to term of said courts, until discharged by due course of law, then and there to answer said accusation against him, this obligation shall become void, otherwise to remain in full force and effect.

Taken and approved this 20th November 20 day of

by Sheriff, Harris County Texas Deputy United States Fire Insurance Company

Agent Wisam Muharib Surety 3813 Fulton

Houston, TX 77009 (City and State) (Phone) (713) 759-1000

Lic.# 74599 Empl. S.M.

THE DEFENDANT SHALL NOT HAVE ANY CONTACT WITH THE PROSECUTION /S/, WITNESS /S/, THE COMPLAINANT /S/ OR THE ALLEGED VICTIM /S/.

FILED Marilyn Burgess District Clerk NOV 21 2020

Time: Harris County, Texas By Deputy

SIGNED AND DATED November 20th, 20

X Joseph Gomez (Principal Signature) X 1413 George St (Mailing Address) X Pasadena, Texas (City and State)

RACE SEX DOB HT. WT.

HAIR EYES DL# STATE

Jail Location Harris

Citizen Status:

Holds:

ICE: A#

SB COST RECEIPT # 34900



OATH OF SURETIES THE STATE OF TEXAS COUNTY OF HARRIS

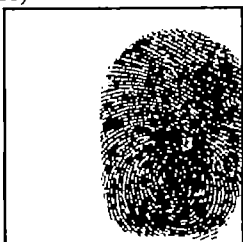
I, United States Fire Insurance Company

do swear that we are worth in our own right, at least double the amount of the sum for which we are bound, exclusive of all property exempted by law from execution, and of debts or other encumbrances, that we are residents of the State of Texas and I have property in the State of Texas liable to execution worth the sum for which I am bound.

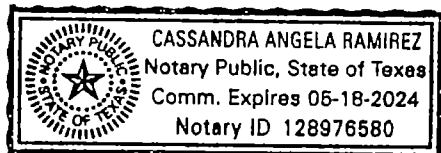
Agent, Wisam Muharib

Surety (Signature)

Presenter (Signature)



Presenter Rt. Thumb Print ID #: 11044917



SUBSCRIBED AND SWORN to before me this 20

day of November A.D. 20

Cassandra Angela Ramirez NOTARY PUBLIC HARRIS COUNTY

My Commission Expires: 5-18-24

RECORDER'S MEMORANDUM This instrument is of poor quality at the time of imaging. 11-01-2009

ORIGINAL-DISTRICT CLERK

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A VOID PANTOGRAPH PRINTED ON SECURITY PAPER WITH A TRUE WATERMARK

UNITED STATES FIRE INSURANCE COMPANY
11490 Westheimer Rd., Suite 300 • Houston, TX 77077
P.O. Box 2807 • Houston, Texas 77262-2807
(713) 954-8100 (713) 954-8389 FAX

POWER OF ATTORNEY

POWER NO. ***U100-21036300***

POWER AMOUNT \$ ***100,000.00***

This Power of Attorney is granted pursuant to Article IV of the By-Laws of UNITED STATES FIRE INSURANCE COMPANY as now in full force and effect. Article IV, Execution of Instruments. Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, Vice President, Assistant Vice President, Secretary or any Assistant Secretary shall have power on behalf of the Corporation: (a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business, including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements; (b) to appoint in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a) including affixing the seal of the Corporation. Authority of such Attorney-In-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitations, fines, restitution, payments or penalties of any other condition imposed by a court not specifically related to court appearance.

This Power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal Bonds or Immigration Bonds. This power void if altered or erased, void if used with other powers of this Company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.

The obligation of the Company shall not exceed the sum of ***One Hundred Thousand Dollars and Zero Cents*** and provided this Power of Attorney is filed with the bond and retained as a part of the court records. The said Attorney-In-Fact is hereby authorized to insert in this Power of Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, UNITED STATES FIRE INSURANCE COMPANY has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this 20 of November 2020

Bond Amount \$ 75,000 Gross Premium \$ _____

Defendant Gomez, Joseph Eric

Charges aslt fam/house mem impd brth/

Court 338

Case No. 1653306

City Houston State Tx

If rewrite, original No. _____

Executing agent [Signature] NAME _____



By [Signature]
Michael Ziemer
Senior Vice President

VOID IF NOT ISSUED BY: 05/31/2021

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THE REVERSE SIDE OF THIS DOCUMENT INCLUDES A SECURITY BACKER

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I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this November 30, 2020

Certified Document Number: 93204922 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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Clinton Morgan
Bar No. 24071454
morgan_clinton@dao.hctx.net
Envelope ID: 48506118
Status as of 12/2/2020 1:42 PM CST

Associated Case Party: State of Texas

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|---------------------------|-----------------------|--------|
| Stacey Soule | | information@spa.texas.gov | 12/1/2020 10:27:44 AM | SENT |

Associated Case Party: Joseph Gomez

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------------|-----------|----------------------|-----------------------|--------|
| T. BrentMayr | | bmayr@mayr-law.com | 12/1/2020 10:27:44 AM | SENT |
| Sierra Tabone | | stabone@mayr-law.com | 12/1/2020 10:27:44 AM | SENT |
| Stanley G.Schneider | | stans3112@aol.com | 12/1/2020 10:27:44 AM | SENT |